IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

WP(C).No. 27759 of 2007(D)

AGAINST THE ORDER DATED 11/09/2007 IN
IA.934,935,943,947/2007 IN
OS.79/2004 of SUB COURT,KATTAPPANA

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PETITIONERS:

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1. DAMODARAN, S/O KESAVAN,
   PAIPPATTU HOUSE, MOOZHIKKAL KARA,
   MALAPPARA VILLAGE, PEERMEDU TALUK.

2. SHIBU, S/O NARAYANAN,
   CHALAPPURATHU HOUSE, MOOZHIKKAL KARA,
   MALAPPARA VILLAGE, PEERMEDU TALUK.

3. PUSHPANGATHAN, S/O ACHUTHAN,
   KURUMANACKAL HOUSE, MOOZHIKKAL KARA,
   MALAPPARA VILLAGE, PEERMEDU TALUK.

BY ADV. SRI.GOVIND K.BHARATHAN
SRI.PRABIN BABU

RESPONDENTS:

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1. AKHILA THIRIVITHAMCORE MALA ARAYA MAHA
   SABHA, BRANCH NO.25, MOOZHIKKAL, REP. BY ITS
   SECRETARY, K.K.DIVAKARAN, KOCHUVEETTIL HOUSE,
   MOOZHIKKAL KARA, MALAPPARA VILLAGE,
   KORUTHODU P.O., PEERMEDU TALUK.

2. MALA ARAYA KSHETHRA SAMRAKSHANA SAMITHY,
   MOOZHIKKAL REG. NO.1-364-2002, REP. BY ITS
   SECRETARY, K.K.BIJU, S/O KARUNAKARAN,
   KUDIPLACKAL HOUSE, MOOZHIKKAL KARA, MALAPPARA
   VILLAGE, KORUTHODU P.O., PEERMEDU TALUK.

3. K.N.NARAYANAN, S/O DAMODARAN
KARUPPASSERIL, PRESIDENT, MALA ARAYA KSHETHRA
SAMRAKSHANA SAMITHY MOOZHIKKAL KARA,
MALAPPARA VILLAGE, KORUTHODE P.O.,
PEERMEDU TALUK.

4. MALA ARAYA MAHA SABHA BRANCH NO.1,
MOOZHIKKAL, REP. BY ITS SECRETARY, K.K.KRISHNAN,
S/O RAGHAVAN, KODUNGAYIL HOUSE, MOOZHIKKAL KARA,
MALAPPARA VILLAGE, KORUTHODE P.O.,
PEERMEDU TALUK.

5. P.N.GOPALAN, S/O NARAYANAN,
PUTHENPARAMBIL HOUSE, PRESIDENT,
MALA ARAYA MAHA SABHA BRANCH NO.1,
MOOZHIKKAL KARA, MALAPPARA VILLAGE,
KORUTHODE P.O., PEERMEDU TALUK.

BY ADV. SRI.G.S.REGHUNATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/10/2007, ALONG WITH WPC NO. 28008 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioners' Extsd:

Ext.P1 photocopy of the plaint in OS 103/2007 of the Sub Court, Kattappana.

Ext.P2 photocopy of the plaint in OS No.79/2004 of the Sub Court, Kattappana.

Ext.P3 photocopy of the application IA 935/07 in OS 79/2004.

Ext.P4 photocopy of the application IA 934/07 in OS 79/2004.

Ext.P5 photocopy of the order dtd 11.9.2007 in IA Nos. 934/07, 935/07, 943/07 and 947/07 in OS 79/04

M.N.Krishnan, J.

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W.P(C).Nos.27759 & 28008 of 2007

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Dated this the 18th day of October, 2007.

JUDGMENT

These Writ Petitions are preferred against the common order in I.A.Nos.934 of 2007, 935 of 2007, 943 of 2007 and 947 of 2007 in O.S.No.79 of 2004 of the Subordinate Judge's Court, Kattappana. The applications are for one impleadment of them as parties and also for a stay of the suit under Section 151 of C.P.C. The court below disallowed all the applications and it is against that the present Writ Petitions are filed.

2. Heard both sides. As far as the prayer for stay under Section 151 of C.P.C. is concerned, it cannot be entertained for the reason that the say of the suit is specifically governed by another provision, namely, Section 10 of C.P.C. Under Section 10 of C.P.C. only the latter suit can be stayed and not former suit to be stayed till the disposal of the latter suit. Therefore, the prayer for disallowing the stay of the proceeding is to be interfered with.

3. So far as the impleadment is concerned, the writ petitioners contend that they are in possession of the property and manage all the Temples and therefore their impleadment as parties is necessary for a proper adjudication of the case. The plaintiffs have filed the suit for recovery of possession of the property from the defendants on the strength of their prior possession. So large number of issues are involved and who is in actual possession and who is entitled to the reliefs are all matters which has to be decided only after a detailed trial. When a party comes before the court claiming that they are in possession of the property their junction is necessary for the reason that for a proper resolution of the controversy, it is a must.

4. Therefore, I feel that this is a fit case where the court should have allowed the impleadment applications. Therefore the orders passed on impleadment applications are set aside and the court below is directed to implead these persons and direct the plaintiff to carry out the amendment. The impleaded parties shall file written statements within a period of two weeks from the date of carrying out the amendment and a further direction is given to the court below to dispose of the suit within a time

frame of two months from today. In order to enable the parties to have quick approach, I direct the Registry to send immediately a copy of this order to the Subordinate Judge, Kattappana for compliance and necessary action.

Writ Petitions are disposed of accordingly.

M.N.Krishnan,
Judge.

ess 18/10